

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

In the matter of:)	DOCKET NO. S-21147A-21-0051
)	
FAMILY TREE ESTATE PLANNING, LLC,)	NOTICE OF OPPORTUNITY FOR
an Arizona limited liability company,)	HEARING REGARDING PROPOSED
)	ORDER TO CEASE AND DESIST, ORDER
SEAN N. CAGLE, a single individual,)	FOR RESTITUTION, ORDER FOR
)	ADMINISTRATIVE PENALTIES, AND
BRAD GERALD MASON, a single individual,)	ORDER FOR OTHER AFFIRMATIVE
and)	ACTION
)	
JASON WOOTEN, a single individual,)	
)	
)	
Respondents.)	
)	

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Family Tree Estate Planning, LLC, Sean Cagle, Brad Mason, and Jason Wooten have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Jason Wooten is a person controlling Family Tree Estate Planning, LLC within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Family Tree Estate Planning, LLC for its violations of the antifraud provisions of the Securities Act.

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. Family Tree Estate Planning, LLC (“Family Tree”) is a limited liability company organized under the laws of the state of Arizona on October 10, 2007. Family Tree is a member-managed company and Jason Wooten is the sole member. Family Tree has not been registered with the Commission as a securities salesman, dealer, or investment advisor.

3. Sean N. Cagle (“Cagle”) is an Arizona resident and was an Arizona resident during the relevant time period. Cagle has been a licensed Arizona insurance producer since February 23, 2016, license number 17863793. During the relevant time period, Cagle held himself out to be a Senior Estate Planning Consultant with Family Tree. Cagle has not been registered with the Commission as a securities salesman, dealer, or investment advisor.

4. Brad Gerald Mason (“Mason”) is an Arizona resident and was an Arizona resident during the relevant time period. Mason has been a licensed Arizona insurance producer since October 6, 2016, license number 18142593. During the relevant time period, Mason held himself out to be a Senior Estate Planning Consultant with Family Tree. Mason has not been registered with the Commission as a securities salesman, dealer, or investment advisor.

5. Jason Wooten (“Wooten”) is an Arizona resident and was an Arizona resident during the relevant time period. During the relevant time period, Wooten held himself out to be the Principal and CEO of Family Tree. Wooten has not been registered with the Commission as a securities salesman, dealer, or investment advisor.

6. Family Tree, Cagle, Mason, and Wooten may be referred to collectively as “Respondents.”

III.**FACTS**

7. During the relevant time period, Family Tree held itself out to be a “full service Estate Planning company,” and offered and sold services such as wills, trusts, and estate planning and life insurance products.

8. From at least 2016, in addition to insurance products, Respondents offered individuals investments in debentures (“EquiAlt Debentures”) issued by companies controlled by EquiAlt, LLC, including EquiAlt Fund, LLC (“Fund I”), EquiAlt Fund II, LLC (“Fund II”), and EA SIP, LLC.

9. EquiAlt, LLC, Fund I, Fund II, and EA SIP, LLC, will be collectively referred herein as “EquiAlt,” and those who invested in the EquiAlt Debentures will be referred herein as “Investor(s).”

10. EquiAlt Debentures promised a fixed rate of return at 8-9% annually, and Investors had the option to either receive monthly, quarterly, or semi-annual payments or to re-invest their rate of return.

11. Respondents sold at least 323 EquiAlt Debentures to Investors, totaling at least \$37,021,777.73 invested.

12. From 2016 through 2019, Respondents earned commissions for sales of EquiAlt Debentures totaling at least \$3,738,040.51. Commissions went to Respondent Family Tree, and then Respondents Cagle, Mason, and Wooten would receive a percentage of the commissions for their sales and Respondent Family Tree would receive a percentage, as well.

13. Respondent Family Tree advertised its services throughout Arizona. It utilized direct mail marketing that allowed recipients to mail their contact information back to Family Tree. Family Tree also conducted seminars on creating trusts throughout Arizona. Family Tree provided a list of their services to at least some individuals who attended the seminars. This list did not include any mention of investments, financial advising, or other services related to investing in securities. Family

1 Tree's targeted demographic is individuals 55 years of age and older, who are homeowners with an
2 income of \$30,000 a year or more.

3 14. Many individuals who attended Family Tree's trust seminars were required to finalize
4 their trusts at the Family Tree office. Once the clients were in the office, they would be solicited
5 EquiAlt Debentures, primarily by Respondent Wooten. At no time did any of the Respondents
6 disclose to the Investors that when they came to the office to complete their trusts, they would be
7 offered the opportunity to invest in EquiAlt Debentures. Nevertheless, upon review of their
8 financials, Respondent Wooten told many Investors their current portfolio was not benefiting from
9 the best rates of return and they could be receiving 8% with EquiAlt Debentures. At least one Investor
10 felt pressured by Respondent Wooten to "put all her eggs in one basket" and invest everything in
11 EquiAlt Debentures.

12 15. Respondents provided at least some, if not all, of the Investors with marketing material
13 that advertised EquiAlt Debentures as an "[o]ppportunity to make investments in whole distressed
14 Single-Family Real Estate focused on equity [sic] on acquisition [sic] buying and buy-to-rent
15 strategies."

16 16. Respondents provided at least some, if not all, of the Investors with EquiAlt's private
17 placement memoranda ("PPMs"), subscription agreements ("Subscription Agreement(s)"), and
18 summary of terms ("Summary of Terms").

19 17. The PPMs and the Summary of Terms stated that Investors would receive 8 to 9%
20 return on their principal which would be paid monthly, quarterly, semi-annually, or based on growth
21 through a 3- or 4-year term.

22 18. The PPMs also stated that the purpose of the investment was to generate capital for
23 EquiAlt to "purchase, improve, lease and, or dispose of distressed real property, enter into
24 opportunistic lien transactions and/or engage in other ventures."

25 19. The Subscription Agreements outlined the units that the Investors were purchasing at
26 \$10.00 per unit.

20. For most Investors, Family Tree facilitated the transfer of their investment money to EquiAlt: Some Investors delivered their check for EquiAlt directly to Family Tree, who then delivered the checks to EquiAlt. Family Tree facilitated the movement of other Investors' money from their self-directed IRA into EquiAlt.

21. At least some of the Investors would be impacted negatively if they lost the money that they invested in EquiAlt Debentures. At least one Investor invested their entire life savings in EquiAlt Debentures, while another Investor faces losing his home.

22. Many Investors did not have investment experience and/or did not qualify as accredited investors.

23. On February 11, 2020, the Securities and Exchange Commission ("SEC") filed a complaint in the U.S. District Court for the Middle District of Florida against EquiAlt, LLC, EquiAlt Fund, LLC, EquiAlt Fund II, LLC, EA SIP, LLC, and related parties. In its complaint, the SEC alleged that EquiAlt had been conducted as a Ponzi scheme since 2011 and has raised over \$170 million from over 1,100 investors nationwide.

24. On February 14, 2020, the judge in the SEC case issued an order appointing a receiver for EquiAlt to take immediate possession of all EquiAlt property, assets, and estates.

25. Even after the filing of the SEC case, Wooten; Barry Rybicki ("Rybicki"), EquiAlt Managing Director; and Cal Babbini ("Babbini"), EquiAlt Client Relations Director, were planning to launch a new company that would invest in real estate assets. In an email exchange on February 19, 2020, Babbini sent Wooten his resume and discussed his salary and role within the new company.

Untrue Statements and Omissions by Respondents

26. Subscription Agreements for EquiAlt Debentures specifically stated that the "Units are being sold through the Company without commission." Respondents omitted to tell at least some of the Investors that they were being paid commissions for the sale of the EquiAlt Debentures.

27. Respondents Cagle and Wooten misrepresented to at least some Investors that EquiAlt Debentures were not securities. One Investor requested an early redemption of her investment

1 because she thought she had purchased an annuity. When another Investor asked Respondent Cagle
2 if EquiAlt Debentures were a security, Cagle told the Investor it was an IRA. At least two other
3 Investors also believed EquiAlt Debentures to be an annuity or an IRA. The PPM specifically refers
4 to EquiAlt Debentures as a “security.”

5 28. Respondents Mason and Wooten misrepresented to at least some of the Investors the
6 risk of the EquiAlt Debentures. Respondent Wooten told at least some Investors their funds were
7 “free from risk,” “insured,” and “guaranteed.” Respondent Mason told one Investor “You cannot lose
8 money with this product, and you will not earn more or less than 8%.”

9 29. Respondents Mason and Wooten misrepresented or omitted to at least some of the
10 Investors the tax consequences of investing in EquiAlt. Respondent Wooten told one Investor
11 investing in EquiAlt Debentures would result in a tax deferral. However, the Investor ended up owing
12 \$4,000 in taxes. Another Investor, upon the advice of Respondent Mason, cashed out his CD and
13 invested \$30,000 in EquiAlt Debentures. When he received his 1099, he realized he had been taxed
14 on his entire investment, a reality that had not been discussed with the Investor prior to the
15 investment. When this Investor called the Family Tree office, he was told Family Tree was no longer
16 associated with EquiAlt and he needed to contact EquiAlt’s attorney.

17 30. Respondent Wooten misrepresented to at least some Investors the liquidity of EquiAlt
18 Debentures. Wooten represented to Investors that EquiAlt Debentures allowed for Investors to be
19 refunded their principal within 60 days of their request. However, after at least July 2, 2019,
20 modifications to EquiAlt Debentures, including early redemptions, were subject to denial by EquiAlt
21 Management. Additionally, a 10% “surrender fee” applied to early redemptions and early
22 redemptions were only processed quarterly and took effect the 2nd quarter from the quarter in which
23 the request was made.

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IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

31. From on or about October 2016, Respondents offered or sold securities in the form of debentures, notes, or evidence of indebtedness, within or from Arizona.

32. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

33. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

34. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

35. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

36. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Respondents misrepresented and/or omitted to at least some of the Investors the payment of commissions, when in fact they received at least \$3,738,040.51 in commissions from the sale of EquiAlt Debentures;

b) Respondents Mason and Wooten misrepresented and/or omitted to at least some of the Investors the risk involved with investing in EquiAlt Debentures or represented that the investment was safe and there were no risks, when in fact the PPM states that these were highly speculative investments;

c) Respondents Cagle and Wooten misrepresented to at least one of the Investors that EquiAlt Debentures were not securities, when in fact the PPM states EquiAlt Debentures are securities.

d) Respondents Mason and Wooten misrepresented or omitted to tell to at least some of the Investors the tax consequences of investing in EquiAlt.

e) Respondent Wooten misrepresented the liquidity of EquiAlt Debentures when they told Investors the principal could be returned within 60 days of a request, when in actuality there was a early redemption request process that could be denied, and a 10% surrender fee applied.

37. This conduct violates A.R.S. § 44-1991.

VII.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

14. From at least October 10, 2007 through the present, Wooten has been and/or held himself out as Principal and CEO of Family Tree.

15. From at least October 10, 2007 through the present, Wooten directly or indirectly controlled Family Tree within the meaning of A.R.S. § 44-1999. Therefore, Wooten is jointly and severally liable to the same extent as Family Tree for its violations of A.R.S. § 44-1991 from at least October 10, 2007 through the present.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306.

If a Respondent requests a hearing, the requesting Respondent must also answer this Notice. A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/securities/enforcement/procedure>.

X.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/hearing>.

Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Elizabeth Schmitt.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering Respondent or Respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering Respondent intends in good faith to deny only a part or a qualification of an allegation, the Respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

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Dated this 22nd day of March, 2021

/s/ Mark Dinell
Mark Dinell
Director of Securities